



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI

1201 ELM STREET
DALLAS, TEXAS 75270

URD 2827-0

Gen. Corre

November 3, 1986

Mr. Bruce Fink, Assistant Chief
Groundwater Conservation Section
Texas Water Commission
P.O. Box 13087, Capitol Station
Austin, TX 78711

Dear Mr. Fink:

Regarding: Uranium Resources, Inc.'s draft permit UR 02827 (Kingsville
Dome Site) and associated attachments UR 02827

In your October 1, 1986 letter to me, you requested that my staff review the referenced draft permits and provide comments to your office. We have now completed our review of the draft permits as well as the "HEARING EXAMINER'S PROPOSAL FOR DECISION", and the draft Commission "ORDER" issuing Permits Nos. UR 02827, WDW-247 and WDW-248. Notwithstanding the Commission's authority under State law, under Federal regulations final authority for the issuance of any "aquifer exemption" is vested in the United States Environmental Protection Agency (EPA); therefore, after receiving an official request from the Executive Director for issuance of the aquifer exemption, we will evaluate all documents in support of the exemption (based upon the criteria identified at 40 CFR 146.4) and will prepare additional comments at that time. However, pursuant to your request we are pleased to offer the following comments which are based upon the Federal criteria for primacy delegation to State UIC programs.

1. Reference: HEARINGS EXAMINER'S PROPOSAL FOR DECISION

The Hearings Examiner's proposal to the Commissioners appears to presume authority which does not reside in the State of Texas. The EPA's intention to reserve ultimate authority for allowing injection into underground sources of drinking water (through the issuance of aquifer exemptions) is expressly stated at 40 CFR 144.7(b)(2) and (3).

144.7(b)(2):

"No designation of an exempted aquifer submitted as part of a UIC program shall be final until approved by the Administrator as part of a UIC program."

144.7(b)(3):

"Subsequent to program approval . . . exemption of aquifers identified

- (i) under 146.4(b) shall be treated as a program revision under 145.32;
- (ii) under 146.4(c) shall become final if the State Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days."

The Hearings Examiner's proposal should be modified to reflect that ultimate approval of the requested aquifer exemption must be given by EPA.

Additionally, any specific statement within the Hearings Examiner's proposal which implies State authority that is contrary to 40 CFR 144.7(b) is inappropriate. For example:

Reference: p.8, HEARINGS EXAMINER'S PROPOSAL FOR DECISION

"Though URI has proved itself entitled to . . . granting of the exempted aquifer status . . ." (No demonstration has been made to EPA in support of the aquifer exemption request.)

2. Reference: Texas Water Commission "ORDER" (draft)

a. Reference: p.4, "FINDINGS OF FACT" (number 10) -

The Order finds that: "The wastes to be generated by the mining operation and disposed of by deep well injection are not classified as hazardous wastes by the Commission." However, 31 TAC 331.2 defines "Hazardous industrial waste" [emphasis added] to be "any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the Administrator of the United States Environmental Protection Agency . . .". Therefore, we recommend that the "finding" be modified to indicate that the Administrator is responsible for classifying wastes as hazardous, or that the Commission's determination that the waste is non-hazardous is based upon the regulations at 40 CFR Part 261, Subparts C and D.

b. Reference: p.16, "CONCLUSIONS OF LAW" (number 2) -

The "Conclusion" states: "The Texas Water Commission has jurisdiction to consider the applications and is authorized to issue the permits and exempted aquifer for which URI applied." [emphasis added] As previously discussed, the EPA has reserved authority for issuance of aquifer exemptions; therefore, the contingency of the Commission's authority to issue an aquifer exemption upon its having received EPA approval should be indicated.

c. Reference: p.17

(Order No. 1) - That portion of the "Order" which conveys Commission approval of the aquifer exemption for which URI has applied should be stricken or modified so as to reflect EPA's authority.

3. Reference: Permits Nos. UR 02827, WDW-247, and WDW-248 (drafts)

Although the Commission's authority to issue such permits is sovereign, we do appreciate the opportunity to review them and prepare comments.

a. Draft Permit UR 02827:

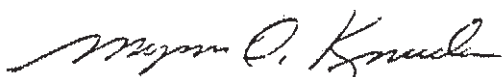
- i. The Texas Water Commission (TWC) has submitted a quality assurance project plan (QAPjP) to the EPA which states that: "All samples collected by, and analyzed for, the TWC for the UIC program will be subject to the QA plan requirements" and "any private entities generating or utilizing UIC fluid chemical data will be required to follow US EPA approved methods and procedures". With the exception of "Standard Provision" VI(C)(2), the draft permit is silent on the subject of quality control/assurance. An additional permit condition, or conditions, should require that "During all activities leading to the generation of fluid chemical data, the permittee shall follow US EPA approved methods and procedures."
- ii. "Special Provision" VII(G)(2), on page 7, requires submittal of corrective action reports to the Director of the Hazardous and Solid Waste Division. Since Class III Uranium Permits are now monitored by the Water Rights and Uses Division, should the reference be changed?

b. Draft Permits WDW-247 and WDW-248:

Regarding the proposed "deep well" permits, we have no specific recommendations or comments to provide at this time.

We appreciate the opportunity to comment, and I hope the foregoing recommendations will be of assistance to the Commission. Please contact me or have your staff contact Rich Wooster at (214) 767-2748 if you have any questions concerning our recommendations.

Sincerely yours,



Myron O. Knudson
Director, Water Management Division (6W)

cc: Bill Klement, Chief
Groundwater Conservation Section, TWC

Charmaine J. Rhodes
Office of the Hearings Examiner, TWC